

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FRAYNE A. WISKUS,

Petitioner,

-VS-

DOUGLAS WEBER,
Warden, SD State Penitentiary,

Respondent.

CIV 08-4030

ORDER

FILED
MAR 07 2008
[Signature]

Petitioner Frayne Aeron Wiskus has filed an Application and Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2255 (Doc. 1). It appears, however, that Mr. Wiskus is currently incarcerated at the South Dakota State Penitentiary, a state facility rather than a federal facility. Therefore, it appears the action should be brought pursuant to 28 U.S.C. § 2254 instead. A prerequisite for doing so, however, is that Mr. Wiskus must exhaust his available state remedies before pursuing an action in federal court. No mention of this being done is contained in Mr. Wiskus' application.

Further, it appears Mr. Wiskus may intend to have brought a separate prisoner civil rights action under 42 U.S.C. § 1983 (Docs. 7 & 8).

Although Mr. Wiskus is a prolific writer, his pleadings lack basic information which is needed in order to further evaluate his case(s). Accordingly, it is hereby

ORDERED, that the clerk of court shall forward the appropriate forms for filing a 2254 habeas action and a 1983 prisoner civil rights action to Mr. Wiskus to fully complete and return for filing, if it is his intent to file such cases. The filings are due on or before May 1, 2008, or this case will be dismissed for lack of prosecution.

Dated this 7 day of March, 2008.

BY THE COURT:

[Signature: John E. Simko]
John E. Simko
United States Magistrate Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: *[Signature: Shelly Margulies]*
(SEAL) DEPUTY